

**RAIL SERVICE COMPETITION COUNCIL  
COUNCIL MEETING  
MINUTES**

**Wednesday  
June 18, 2008  
10:00am – 3:00pm**

**Transportation Commission Room  
2701 Prospect Ave.  
Helena, Montana**

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**COUNCIL MEMBERS PRESENT:** Chairman Mike O'Hara, Mike Scanlan, Russ Hobbs, Larry Bonderud, Carla Allen, Doug Miller, Jim Lynch, Bill Fogarty, Evan Barrett, Rep. Mike Milburn and Sen. Ken Hansen.

**COUNCIL MEMBERS ABSENT:** Ron de Yong, John DeMichiei

**REPRESENTING COUNCIL MEMBERS:**

Larry Finch for Dan Bucks

**AGENCY REPRESENTATIVES AND GUESTS:** Jim Currie, Zia Kazimi, Hal Fossum, Barbara Ranf, Will Roehm, Mark Cole, Renee McDaniel.

**RSCC ASSISTANCE:** Gloria O'Rourke, Terry Whiteside

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**1.0 WELCOME AND INTRODUCTIONS**

Chairman Mike O'Hara called the meeting of the RSCC to order and requested roll call; members of the audience were introduced.

**2.0 APPROVAL OF MINUTES**

Bill Fogarty moved to approve the minutes of the April 2 meeting; Carla Allen seconded the motion. All voted in favor of approval.

**3.0 TECHNICAL ASSISTANCE UPDATE – TERRY WHITESIDE**

Terry Whiteside provided a brief overview on the following; the full report is available at <http://www.mdt.mt.gov/business/rsccl/>

- Congressional Update Regarding Rail and Shipping Issues
  - HR 2125 and S953: Rail Competition and Service Improvement Act – awaiting hearing. Note: these are not “reregulatory” bills.
  - HR 1650 and S772: Railroad AntiTrust and Enforcement Act – ready for floor action.
  - Seven amendments in Energy, Appropriations, Judiciary, Agriculture, etc., committees to study the lack of rail competition problems – most have moved on in Committee bills.
  - S. 772 RR and HR 1650 AntiTrust Bills are poised for full Senate & House debate and vote.
  - Farm Bill Passes and Rail Study makes it into final Override Bill. This is a study of RR impacts on U.S. Agriculture.
- Surface Transportation Board Update
  - Board Member Frank Mulvey (D) was reconfirmed by the Senate for the next 4 years.
  - STB conducting a study on rail competitiveness and consultant is taking input from shippers – Christensen Study, due Fall 2008.
  - Dairyland files fuel surcharge challenge – awaiting STB ruling on UP motion to dismiss.

- ADM files fuel surcharge challenge in court.
- STB expected to rule on first ‘small rate’ filings (DuPont) under new rules – on or about July 3<sup>rd</sup>.
- Rail Shippers have filed appeal to Special Appellate on small rate case rules in DC.
- President of STB Board pending: President Bush announced May 20 his intention to nominate Republican Husein A. Cumber, a former lobbyist for Florida East Coast Industries -- when it owned Florida East Coast Railway - and who currently is the U.S. Department of Transportation's Deputy Chief of Staff.
- CP/DM&E Merger
  - Classified as a ‘Significant’ merger – thus it is on an extended time table
  - CP wants to acquire DM&E in South Dakota and would provide capital for DM&E’s proposed extension (approved) into the Powder River Basin
- STB Holds Hearing on Common Carrier Obligations of RR
  - Shippers cited example after example of RR’s not living up to CC Obligation
- Examples of How RR’s Influence Congress
- This Year’s Harvest
  - UP has raised its rates on wheat to Gulf and PNW by an additional \$400/car to catch this year’s wheat harvest.
  - These rates are on top of precipitous UP rate increases in the last 15 months (up in some places by over 38%) not including fuel which is up over 30% in the last twelve months.
- Louisiana Moves RR Price Fixing Prohibition
  - Louisiana Chemical Association (LCA)-sponsored legislation, SB 628, by Sen. Nick Gautreaux, D-Abbeville. This legislation allows the State Attorney General to investigate price fixing by railroad companies in the state. And, the legislation says “prohibits a corporation owning or operating a railway in this state from fixing a price for moving goods within this state at a rate higher on a portion of a line than the price charged for a comparable distance on another part of a line.”

#### **4.0 RAIL DEVELOPMENTS IN NEIGHBORING STATES – JIM LYNCH**

Montana Department of Transportation Director Jim Lynch provided the following report on activity in neighboring states:

##### **North Dakota:**

- Due to a surplus of regional production over pipeline capacity in the Williston area, Burlington Northern Santa Fe Railway (BNSF) is considering tanker train service for crude oil transport.
- Producers of organic, specialty, and identity-preserved agricultural crops in the state believe they can support expansion of full intermodal rail services in Dilworth and Minot by initially "co-loading" container trains at these two locations. Discussions with BNSF are continuing.
- In order to supply energy to sugar beet producers, coal distribution facilities (rail-to-truck) have been developed in Ardoch. Currently, there are efforts to develop another such facility in the southeastern part of the state.

##### **South Dakota and Wyoming:**

- The Dakota Minnesota and Eastern Railroad (DM&E) has approval to expand its lines into the Powder River Basin in Wyoming. The DM&E is pursuing a 280 mile extension of its current line as well as reconstruction of 600 miles of existing track.

- A purchase offer of DM&E by Canadian Pacific is pending before the STB. The STB decision is expected in October 2008.

**Idaho:**

- Due to relatively close access to barge shipping in Lewiston and container ports in Salt Lake City and Seattle, container rail has been less prominent in this state.
- No significant growth or change in rail service was noted.

## **5.0 COMPREHENSIVE PLAN PROCESS**

Facilitator Renee McDaniel, Montana Department of Transportation, reviewed ground rules and then assisted the RSCC in beginning a comprehensive plan. Each subcommittee reported their findings; results were charted and placed into the framework below. This information will be placed into a draft comprehensive plan format.

### **RSCC REPORT June 2008 Draft**

**PURPOSE:** Based on the information below, a comprehensive and coordinated plan will be developed to increase rail competition in Montana.

#### **Forest, Paper, and Industrial Products Shipping:**

**A. Title:** Improving access for forest, paper and industrial products to Southern markets via UP, CP and/or other rail service access.

**Description:** Work to address issues and obstacles to expanded rail access to Southern markets for Montana's forest, paper, and industrial products particularly in the Intermountain West making these products more competitive.

**Barriers:** Identified barriers: "paper barriers" including contractual and regulatory issues and the problems being created by changing Federal regulation.

- **"Paper Barriers":** While physical linkages between lines to provide for improved market access already largely exist contractual and regulatory issues between carriers and between carriers and industrial consumers continues to create major obstacles to expanding market access.
- **Federal Regulation Changes:** The possibility of major changes in Federal regulation presently under consideration may significantly alter the nature of this problem.

#### **Benefits of increased competition:**

- **Improved Competitiveness:** Overcoming these barriers and creating improved rail access for Montana's forest, paper, and industrial products will make those products more competitive and foster improved growth in these industries.
- **Reduced reliance on truck carriers:** Creating expanded rail access to southern markets will reduce truck traffic on Montana's highways and possibly reduce product costs related to rising fuel costs for the trucking industry.

**Implementation Needs:** Improved understanding of the "paper barriers", acquiring expertise to address these issues, and improving communication between the state, industrial consumers and the rail service providers are seen as key needs.

- **Understanding “paper barriers”:** Understanding the nature of contractual agreements between rail service providers and industrial consumers needs to happen. Issues to be considered should address what role, if any, the state can play in negotiating contracts, creating incentives and addressing regulatory issues to overcome these “paper barriers”.
- **Acquiring expertise:** The commission needs to access expertise from successful models from surrounding states facing similar concerns. Particularly North and South Dakota and Wisconsin have addressed similar obstacles successfully.
- **Improving communication:** The commission needs to determine what role, if any, state government can play in expediting communication between rail service providers and industrial consumers beginning with improved communication with the UPRR.

**Estimated Costs:** Unknown at this time.

### **Ports/Intermodal Shipping:**

#### **B. Title: Enhance access to intermodal rail service available to Montana consumers.**

**Description:** Work to address issues and obstacles to expand intermodal rail service in Montana. Intermodal refers to the transportation of freight in the same container between modes (ship-rail-road) reloading freight at each juncture.

**Barriers:** Identified barriers include the limited amount of current intermodal volume, the access of Montana industries to sufficient containers, and the limited incentives in place encouraging rail providers to extend intermodal services to the state.

- **Limited volumes:** BNSF prefers a minimum of 220 containers or 110 railcars per week and also prefers that all containers go to the same port or destination. So far in-state shippers have not been able to create the volume necessary to meet this level of demand.
- **Access to containers:** Containers for intermodal transport are not readily available in the state in sufficient numbers to attract industries and businesses.
- **Limited incentives:** There are few if any incentives for rail providers to consider expanding intermodal access to the state's shippers.

**Benefits:** Renewing and expanding intermodal service for Montana businesses and industry would provide access to new markets and increase the volume of both inbound and outbound commodities.

#### **Implementation Needs:**

- **Identify market thresholds:** The commission needs to identify the market thresholds necessary to renew and expand intermodal services from both the rail service providers and the container providers.
- **Seek creative solutions to the container shortage:** Investigate the possibility of using salvaged containers, trailer-on-flatcar configurations, encouraging short line carriers to create intermodal loading centers, and/or acquiring a state fleet of containers.
- **Create incentives:** Encourage entities involved such as carriers, container providers, and/or the Montana Board of Investments to invest in solutions.

**Estimated Costs:** Unknown at this time.

### **Agricultural Products Shipping:**

#### **C. Title: Enhance access for agriculture commodities shippers to rail service.**

**Description:** Montana's agricultural producers need enhanced access to continental rail service providers for their commodity crops. In addition producers of specialized and identity-preserved crops need enhanced access to intermodal shipping for their products.

**Barriers:**

- **Limited access to shipping for agricultural commodity crops:** Class one railroads want a minimum of 110 cars per run. Limited and now almost non-existent loading facilities make it hard for producers to get crops to loading facilities without using long-haul trucking.
- **Limited access to intermodal shipping options:** Railroads need sufficient loads to justify intermodal service while growers need rail transportation options

**Benefits:**

- **Improved market access:** Improving access to rail service for Montana's agriculture producers will in turn improve the market access for these products both nationally and internationally.
- **Reduced truck traffic:** Improving access to rail service will also reduce truck traffic on Montana's highways which are presently being negatively impacted by high fuel costs.
- **Improved competitiveness:** Improving access to rail service for Montana's agriculture producers will help to make the state's products more competitive.

**Implementation Needs:**

- **Enhancing rail access to UP and CP:** Study ways to build and/or gain access to UP and CP loading facilities via alternative rail connections.
- **Motivate Class 1 Carriers to improve intermodal access:** Find incentives to influence Class 1 carriers to improve intermodal access for specialized agriculture products.
- **Explore successful models:** Explore successful models for expanding intermodal rail service in Canada and North Dakota.
- **Haulage rights:** Study successful models from other states in addressing haulage rights for Montana producers.
- **State Rail Authority:** Consider establishing a state rail authority to deal with rail service providers and producers.
- **Revisit "Common Carrier Obligations":** Congress is presently revisiting the definition of what constitutes a "reasonable" request for services which the RSCC should monitor closely.

**Estimated Costs:** Unknown at this time.

**Coal Shipping:**

**D. Title: Keeping Montana's Coal competitive in the U.S. and Around the World.**

**Description:** Montana's Coal producers, both existing and new, will need ready access to both local, short line rail service, and national rail service in order to remain competitive in booming national and international markets.

**Barriers:** Emerging coal producers including those in the Roundup area will need newly constructed rail links to get their coal to market while existing and re-opening mines will need more readily available and less costly rail service to keep their coal competitive.

- **New construction:** The present need for new rail services and the impending need for BNSF to address growing capacity demands for coal shipping are creating a prohibitive barrier to the expansion of Montana's growing coal industry.
- **The Surface Transportation Board:** So far the STB has apparently been unwilling to move toward addressing issues directly and indirectly affecting the cost of Montana's coal causing it to remain less competitive in global markets.
- **Challenges of growing markets on both coasts:** The rising national and international demand for coal makes it essential for Montana's coal producers to be able to meet market demand on both coasts. At the present time BNSF is the sole carrier for Montana's coal and nearly all of its coal shipments are eastbound.
- **Other factors:** Does the combination of coal production costs, fees and taxes, and the high cost of shipping coal via BNSF making Montana's coal non-competitive in current markets?

**Benefits of increased competition:**

- **Opportunities for expansion:** The present demand makes Montana's coal a premium resource for the state if ways can be created with both existing and new mines and rail service providers to control costs and to move the state's coal to markets on both coasts and abroad.
- **Opportunities to market high quality coal:** Coal production in the Roundup area can bring much needed and much sought-after high-quality coal to both national and international markets.

**Implementation Needs:** Addressing the need for expanding the present rail capacities and building new rail capacities to bring Montana's coal to markets as competitively as possible is essential.

- **Study needs and capacities:** Studies are indicating the capacity for coal shipments provided via BNSF will need considerable expansion in the next ten to fifteen years. The need for new spur construction connecting new mining operations to rail service is also a growing concern.
- **Addressing the apparent inaction of the STB:** It may become necessary for the RSCC to bring federal legislative pressure on the STB in order to begin addressing concerns about shipping rates, etc.
- **Accessing growing markets on both coasts:** Improved rail service will be essential in developing markets for Montana's coal in the east and through west coast ports to markets in China and India.
- **Identify the impact of Montana's Coal Severance Tax on the competitiveness of Montana's coal:** It will be essential to create quantifiable data on the total delivered cost of Montana's coal as compared with other states like Wyoming.

**Estimated Costs:**

- Legislation would probably cost over a million dollars.
- Analyzing multiple components of cost of production and transportation to the delivery of coal to final destination of coal: \$27,500
- Analyzing differentials in other costs related to coal production: \$13,000

## 6.0 FORMAL PUBLIC COMMENT PERIOD ON THE RSCC REPORT

The following comments were made from the public regarding the above information:

Mark Cole, Dick Irvin, Inc., Shelby:

- It would be expensive and a logistical nightmare to try to utilize nontraditional container shipments.
- Intermodal transport success is not evident in Canada.
- There is a difference between contract carriers and common carriers.
- Capacity issues exist from Seattle to Tacoma and other areas.

Barbara Ranf, BNSF:

- BNSF would be very interested in the capacity study from MDT and would be willing to work on capacity issues. The Billings to Glendive line is near capacity due to coal movement. Barbara looks forward to working with the follow-up of this report.

Will Rowe, MGGA:

- Sometimes the issue is not availability, but rate. There is a need to separate: is the service not available or is it cost prohibitive? Are we discussing rate or availability, i.e., with wheat – it is a rate issue.
- Regarding intermodal needs, it is more of a service issue for wheat. For lumber, coal and ag it is more of a rate issue. They are correlated but have a different priority for different industries.

## 7.0 NEXT STEPS

It will be important for the RSCC to demonstrate to legislators costs incurred due to the lack of competition as well as business that is not taking place due to non-competition and high cost.

Rep. Milburn said it will be important to provide legislators with data identifying the barriers to competition. He also said that compelling evidence would be needed to obtain support from legislators for creating a rail authority.

Evan Barrett moved for the facilitator and staff to compile a draft report integrating the subcommittee reports and comments brought forward in today's meeting and submit the document to the RSCC for review. Once comment has been received from RSCC members, a second draft will be posted on the RSCC website and made available for public comment prior to the next RSCC meeting. Carla Allen seconded the motion. All voted in favor to approve the motion.

### Conclusions:

- The RSCC will need technical assistance to accomplish the work that needs to be done.
- Funding is required to conduct needed studies.
- The information compiled today is a report. From this report, a comprehensive plan will be developed.

## 8.0 SUBCOMMITTEE UPDATES

8.1 Forest/Paper (Russ Hobbs, Chair), Ports/Intermodal (Bill Fogarty, Chair), Agriculture (Carla Allen, Chair) Subcommittees had no additional information to share.

8.2 Evan Barrett, Chair of the Coal Subcommittee, said an appraisal of the coal in the Otter Creek Tracks is under way. Upon completion of appraisal, the land board will look into a lease offering subject to a co-development partner. On the Bull Mountain properties, a significant investor has put down earnest money; the transaction should close in mid July. In addition, the Carpenter Creek Project, adjacent to Bull Mountain, may come in for a permit by fall.

## **9.0 Rail Updates**

There were no rail updates at this time from the UP, CP, MRL, BNSF, CMR or Watco.

## **10.0 Next Council Meeting Location, Date and Agenda**

**10.1** The next RSCC meeting will be held September 17<sup>th</sup> at 10:00am. Location: Montana Department of Transportation Commission Room.

### **10.2 Agenda items will include**

- Review of the RSCC Report
- Paper barriers and their effect on competition
- Comparison of what other states have done regarding paper barriers (ND, SD, Wisconsin)
- Clarification of what MDT can do as far as filling information needs in the RSCC report.
- MDT research report on state and county (SEDA-COG) rail authorities: who has them, what is working, what is not working.

## **11.0 Comments or Issues from Council Members**

Renee McDaniel was thanked by the RSCC for her assistance in facilitating the RSCC report discussion.

## **12.0 Formal Public Comment Period – No comments.**

## **13.0 Adjournment**

Russ Hobbs moved to adjourn; Bill Fogarty seconded the motion. All voted in favor